

Before the  
UNITED STATES COPYRIGHT ROYALTY BOARD  
Washington, D.C.

**In the Matter of:**

**DETERMINATION OF RATES  
AND TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(*Phonorecords IV*)**

**Docket No. 21-CRB-0001-PR  
(2023 – 2027)**

**JOINT SUBMISSION REGARDING REDACTION OF  
APRIL 20, 2022 ORDER ON AMAZON’S MOTION TO COMPEL  
DOCUMENTS CONCERNING THE [REDACTED]**

The National Music Publishers’ Association, the Nashville Songwriters Association International (together, the “Copyright Owners”) and Amazon.com Services LLC (“Amazon”), each a Participant in the *Phonorecords IV* proceeding, make this joint submission regarding redaction of the Judges’ April 20, 2022 Order on Amazon Motion to Compel Production of Documents Concerning [REDACTED] (“Order”).

Pursuant to the Order, the Copyright Owners and Amazon conferred to identify confidential material contained in the Order, which they request be redacted from the public version. The agreed redacted version for public view is attached hereto as Exhibit A.

Dated: April 29, 2022

Respectfully submitted,

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# Exhibit A

**UNITED STATES COPYRIGHT ROYALTY JUDGES**  
**The Library of Congress**

*In re*

**DETERMINATION OF ROYALTY RATES AND  
TERMS FOR MAKING AND DISTRIBUTING  
PHONORECORDS (Phonorecords IV)**

**Docket No. 21-CRB-0001-PR  
(2023-2027)**

**[RESTRICTED] ORDER ON AMAZON MOTION TO COMPEL PRODUCTION OF  
DOCUMENTS CONCERNING [REDACTED]**

THIS MATTER is before the Copyright Royalty Judges (Judges) on motion of Amazon.com Services LLC (Amazon). Amazon filed a Motion to Compel Production of Documents ... from Copyright Owners (Feb. 22, 2022) (Motion), to which the Copyright Owners filed a Memorandum in Opposition (Mar. 2, 2022) (Opposition).<sup>1</sup> Amazon subsequently filed its Reply in Support of [the] Motion ... (Mar. 7, 2022) (Reply). The Motion seeks an order compelling [REDACTED]

[REDACTED] The crux of the Motion is that Copyright Owners failed or refused to produce, or destroyed, relevant documentation of [REDACTED]

Amazon contends that the Agreement is a “key benchmark agreement” that undermines Copyright Owners’ rate proposal in this proceeding. Copyright Owners counter that they do not offer the Agreement as a benchmark in this proceeding. On the contrary, Copyright Owners discredit the Agreement as an outlier in the field of negotiated license agreements.<sup>2</sup> See Opposition at 2. Copyright Owners allege that even Amazon considers the Agreement to be an outlier, but nonetheless refers to the Agreement as a “key benchmark.” Motion at 1.

On April 13, 2022, in response to a request from the Judges, the parties agreed that the request in the Motion for [REDACTED] to run specific electronic searches, found at pages 12 through 14 of the Motion, are now moot.

The fact that Copyright Owners consider the Agreement to be an “anti-benchmark” is not a reason to deny reasonable discovery regarding the origins and sources of the Agreement.

<sup>1</sup> Copyright Owners’ Opposition was accompanied by a Declaration of Marion R. Harris, one of the attorneys representing Copyright Owners in the captioned proceeding. Declaration of Marion R. Harris (on Behalf of Copyright Owners) (Mar. 30, 2022).

<sup>2</sup> Copyright Owners counter that the only mention of the Agreement in their written direct statement materials is [REDACTED] Opposition at 2

Amazon's discovery demands into an Agreement [REDACTED] however, must be considered in context. Amazon surely has employees or representatives who [REDACTED] Amazon might, as Copyright Owners contend. [REDACTED]


[REDACTED] In either event, historical precedent of the Agreement under all of the specific circumstances, may be tangentially related to Copyright Owners' written direct statement.

Substantive value of the evidence aside, however, the Motion seeks an order addressed to Copyright Owners compelling 1) additional, specified searches, 2) interviews of records custodians by counsel, 3) an affidavit of counsel detailing discovery efforts, and 4) if Amazon is unsatisfied with Copyright Owners' production, a deposition of a corporate witness.<sup>3</sup> Amazon's requests 2, 3, and 4 are presented as "remedial," but appear rather to be punitive. In any event, Copyright Owners [REDACTED] to conduct the prescribed document searches and produced some additional records responsive to the Motion. In addition, counsel for Copyright Owners filed a Declaration with its Opposition detailing the search efforts and the results thereof. As a result, the parties admitted that the discovery portions of the Motion are now moot.

Under all the circumstances, the Judges consider the entirety of the Motion to be resolved as moot. To the extent Amazon seeks "remedial" or punitive affirmative action by the Judges, the Motion is **DENIED**.

Within ten days of the date of issuance of this Restricted Order, the affected parties shall file an agreed redacted version for public viewing.

**SO ORDERED.**

 Digitally signed by  
Suzanne Barnett  
Date: 2022.04.20  
16:46:35 -04'00'

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Suzanne M. Barnett  
Chief Copyright Royalty Judge

Dated: April 20, 2022.

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<sup>3</sup> Amazon asks that this corporate witness deposition not be counted in the ten-deposition permitted by statute. Motion at 15.

# Proof of Delivery

I hereby certify that on Friday, April 29, 2022, I provided a true and correct copy of the Copyright Owners, Amazon Joint Submission Regarding Redaction of April 20, 2022 Order on Amazon's Motion to Compel Documents (PUBLIC) to the following:

UMG Recordings, Inc., represented by Steven R. Englund, served via E-Service at [senglund@jenner.com](mailto:senglund@jenner.com)

Warner Music Group Corp., represented by Steven R. Englund, served via E-Service at [senglund@jenner.com](mailto:senglund@jenner.com)

Joint Record Company Participants, represented by Susan Chertkof, served via E-Service at [susan.chertkof@riaa.com](mailto:susan.chertkof@riaa.com)

Zisk, Brian, represented by Brian Zisk, served via E-Service at [brianzisk@gmail.com](mailto:brianzisk@gmail.com)

Pandora Media, LLC, represented by Benjamin E. Marks, served via E-Service at [benjamin.marks@weil.com](mailto:benjamin.marks@weil.com)

Google LLC, represented by Gary R Greenstein, served via E-Service at [ggreenstein@wsgr.com](mailto:ggreenstein@wsgr.com)

Spotify USA Inc., represented by Joseph Wetzel, served via E-Service at [joe.wetzel@lw.com](mailto:joe.wetzel@lw.com)

Powell, David, represented by David Powell, served via E-Service at [davidpowell008@yahoo.com](mailto:davidpowell008@yahoo.com)

Apple Inc., represented by Mary C Mazzello, served via E-Service at [mary.mazzello@kirkland.com](mailto:mary.mazzello@kirkland.com)

Sony Music Entertainment, represented by Steven R. Englund, served via E-Service at [senglund@jenner.com](mailto:senglund@jenner.com)

Copyright Owners, represented by Benjamin K Semel, served via E-Service at [Bsemel@pryorcashman.com](mailto:Bsemel@pryorcashman.com)

Johnson, George, represented by George D Johnson, served via E-Service at  
george@georgejohnson.com

Signed: /s/ Joshua D Branson